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WONG YEW LOY

v.

KETUA PENGARAH PERTUBUHAN KESELAMATAN SOSIAL

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HIGH COURT MALAYA, KUALA LUMPUR
LAU BEE LAN J
[CIVIL APPEAL NO: R1-16-10-2008]
15 DECEMBER 2009

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LABOUR LAW: *Employment - Social security - Insured person - Claim for injury benefits - Injuries sustained in road accident while travelling from family home in Perak to living quarters provided by employer in Selangor - Whether an employment injury which could be deemed to arise out of and in the course of employment - Whether family home "a place of residence or stay" - Employees' Social Security Act 1969, ss. 2 , 24, 84, 91*

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WORDS & PHRASES: *"a place of residence or stay" - Section 24(1)(a) Employees' Social Security Act 1969 - Interpretation - Whether connoting permanency or frequency in insured person's travels from abode to place of work*

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This was an appeal against the decision of the SOCSO Appeal Board ('Appellate Board') ruling that the injuries that the appellant had suffered from a road accident on 18 February 2005 was not "an employment injury which could be deemed to arise out of and in the course of his employment" for the purpose of s. 24 of the Employees Social Security Act 1969 ('the Act'). It was not in dispute that the appellant was at the material time employed as a lorry attendant by a ceramic trader in Puchong, Selangor, that he was an insured person under the Act, and that the accident occurred while he was travelling from his family home in Jelapang, Perak to the living quarters provided by his employer in Puchong, Selangor. The Appellate Board, in ruling the way it did, seemed to have taken the view that the appellant's family home in Jelapang did not constitute "a place of residence or stay" as per the requirements of the Act, specifically when it was located outside the geographical limits of the State of Selangor. Before the learned judge herein, the appellant however argued, on the authority *inter alia* of *Ketua*

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Pertubuhan Keselamatan Sosial v. Rajaparameswari Marimuthu, that his family home in Jelapang ought rightly to be construed as his "place of residence or stay" under the s. 24(1)(a) of the Act – and in any case – that it was wrong of the Appellate Board to have given a strict interpretation to the phrase, or not read subs. 24(a) and (b) thereof together. The respondent cited *Ketua Pengarah Pertubuhan Keselamatan Sosial v. Jusoh Abu Bakar* and argued essentially that Jelapang could not be considered as "a place of residence or stay", since there was no permanency or frequency in the appellant's travels from that abode to his place of work.

Held (dismissing appeal):

(1) There is no merit in the appellant's submission that s. 24(1)(a) and (b) should be read together. Clearly, paragraphs (a), (b), (c) thereof ought to be read disjunctively by virtue of the provision which provides that an accident happening to an insured person shall be deemed to arise out of and in the course of employment if it happens when he travels on a route listed in subs. (1)(a) or in any of the journeys listed in subs. (1)(b) or (1)(c) and the usage of the word "or" after the said subs. (1)(b). (*Ketua Pengarah Pertubuhan Keselamatan Sosial v. Jusoh Abu Bakar* (foll)). (para 6)

(2) A distinction ought to be drawn between "residence" and "stay" since "residence" connotes a degree of permanency whilst "stay" connotes that the person would stop at the place only for a short while. However, and whether it be "a place of residence" or "a place of stay", that place must ultimately relate to the insured's place of work for the purpose of s. 24(1)(a) of the Act, since that subsection reads "(a) is travelling on a route between his place of residence or stay and his place of work". The words "between" and "and" are significant as they denote that the route where the insured travels from his "place of residence" or "place of stay" must have a direct nexus to his place of work. It must in short be the base from where he goes to work everyday before any accident happening can be deemed to arise out of and in the course of his employment (*Ketua Pengarah Pertubuhan Keselamatan Sosial v. Rajaparameswari Marimuthu* (foll); *Ketua Pengarah Pertubuhan Keselamatan Sosial v. Jusoh Abu Bakar* (foll); *Ketua Pengarah Pertubuhan Keselamatan Sosial v. Lee Ping Khoon* (foll)). (para 8)

(3) In this case, the appellant's stay at his residence in Jelapang is purely to visit his family or for a break and so cannot be said to be a place of residence in which he intended himself to commute to and from work everyday. (para 8)

(4) As much as the Act is a social legislation, one must not lose sight that the object of the Act is "to provide social security in certain contingencies" as circumscribed in the legislation. The Appellate Board, in consequence, has not erred, save for its reference to Jelapang being outside the geographical limits of the State of Selangor as a factor for excluding the appellant's family home in Jelapang as his place of residence or stay when there is no such limitation in s. 24(1)(a) of the Act. This point however does not affect the correctness of the decision. (paras 9 & 10)

Case(s) referred to:

Ketua Pengarah Pertubuhan Keselamatan Sosial v. Jusoh Abu Bakar [2003] 1 CLJ 383 HC ***(foll)***

Ketua Pengarah Pertubuhan Keselamatan Sosial v. Rajaparameswari Marimuthu [2004] 4 CLJ 528 HC ***(foll)***

Ketua Pengarah Pertubuhan Keselamatan Sosial v. Tham Tian Siong [2008] 8 CLJ 341; [2008] 3 ILR 245 HC ***(foll)***

Ketua Pengarah Pertubuhan Keselamatan Sosial v. Vadivelan Sandara Saigara [2008] 9 CLJ 428; [2008] 4 ILR 485 HC ***(refd)***

Legislation referred to:

Employees' Social Security Act 1969, ss. 2, 24(1)(a), (b), (c), (2), 84, 91

For the appellant - G Balasunderam; M/s SC Thai & Bala Assoc
For the respondent - Patricia Ng; M/s Skrine

Reported by Wan Sharif Wan Ahmad

JUDGMENT

Lau Bee Lan J:

[1] The appellant (employee) has pursuant to s. 84 of the Employees' Social Security Act 1969 (Act 4) ("the Act") appealed against the decision of SOCSO Appellate Board (Jemaah Rayuan Keselamatan Sosial) given on 16 April 2008 dismissing his appeal against the decision of the SOCSO Board (Pertubuhan Keselamatan Sosial).

[2] The issue is whether the appellant's accident on 18 February 2005 at 9am was an employment injury which can be deemed to arise out of and in the course of his employment for purposes of s. 24 of the Act.

[3] The salient facts of the case are as follows. The appellant is an insured person under the provisions of the Act. At the time of the accident, he was employed as a lorry attendant by Thiam Yee Ceramic Trading addressed at G-17, Jalan Putra Perdana 5E, Taman Putra Perdana, 47100 Puchong, Selangor. Thiam Yee Ceramic Trading ("the employer") is an industry duly registered with the SOCSO Board with Employee Registration Code: B3246901M. The employer provides living quarters for its employees, the appellant amongst others, in a house in Taman Putra Perdana, Puchong, Selangor. It is from this house in Puchong that the appellant commutes to work everyday. The appellant was scheduled to report for work at 9am on 18 February 2005 after his two week long break in conjunction with the Chinese New Year celebrations. On 18 February 2005 at about 9am, whilst the appellant was on his way back from his family home in Jelapang, Perak after having celebrated the Chinese New Year holidays there, the appellant was involved in a road accident on the NKVE Highway in which he sustained a fracture on his left leg, amongst others. The appellant then claimed for employment injury benefits under ss. 2 and 24 of the Act.

[4] The court has considered the appellant's written submission (encl. 10) and the respondent's submission (encl. 11) and the oral submission of the both learned counsel. The court's findings are as follows.

The appellant raised three issues of law in his memorandum of appeal as correctly identified by learned counsel for the respondent:

(a) that the SOCSO appellate board erred in law when it failed to give due consideration to the fact that the accident which occurred on 18 February 2005 was a commuting accident under s. 24 of the Act;

(b) that the SOCSO appellate board erred in law by applying a strict interpretation to the phrase "place of residence or stay" as provided under the Act; and

A (c) that the SOCSO appellate board failed to take into consideration the fact that the appellant's intended destination on 18 February 2005, having departed from his house in Jelapang, is to his workplace and no deviation occurred in the course of his travel.

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[5] With due respect to the learned counsel for the respondent who submitted there is no question of law to be determined, I am of the view that the said issues involved a substantial question of law to warrant this appeal to the High Court under s. 91 of the C Act; although inevitably the court would have to consider the facts.

[6] Learned counsel for the appellant submitted that s. 24(1)(a) and (b) of the Act ought to be read together. With due respect to the learned counsel, I cannot agree and am of the view that paras (a), (b) and (c) of subsection (1) of s. 24 of the Act ought to be D read disjunctively by virtue of the provision which provides that an accident happening to an insured person shall be deemed to arise out of and in the course of employment if it happens when he travels on a route listed in subsection (1)(a) or in any of the journeys listed in subsection (1)(b) or (1)(c) and the usage of the E word "or" after subsection (1)(b) (see *Ketua Pengarah Pertubuhan Keselamatan Sosial v. Jusoh Abu Bakar* [2003] 1 CLJ 383 at p. 386).

[7] The pertinent question to be considered is whether the appellant's family home in Jelapang, Ipoh can be construed as "his F place of residence or stay" under s. 24(1)(a) of the Act. Learned counsel for the appellant basically submitted:

(i) the appellant's place of residence is in Jelapang where he resides with his family citing *Ketua Pengarah Pertubuhan Keselamatan* G *Sosial v. Rajaparameswari Marimuthu* [2004] 4 CLJ 528;

(ii) the court ought to take cognisance of the cultural phenomenon in this country that during a festival as in this case the appellant's place of work was closed for two weeks for the Chinese New Year period; hence it was reasonable for the H appellant to return to his family home in Jelapang to be with his family;

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(iii) it is normal for people to travel directly from their residence to their place of work which is out of State and it is reasonable for the appellant to travel directly to work in Puchong from Jelapang taking into account the distance from Jelapang to Puchong and the time taken for travelling.

(iv) the Act being a social legislation ought to be construed liberally provided there are no violations of its provisions (see *Ketua Pengarah Pertubuhan Keselamatan Sosial v. Tham Tian Siong* [2008] 8 CLJ 341; [2008] 3 ILR 245; *Ketua Pengarah Pertubuhan Keselamatan Sosial v. Vadivelan Sandara Saigara* [2008] 9 CLJ 428; [2008] 4 ILR 485);

(v) the appellant did not make any deviations when travelling on the route from Jelapang to his place of work in Puchong.

Learned counsel for the respondent essentially submitted:

(i) in order for a person's abode to be considered as "a place of residence or stay" there must be a degree of permanency or frequency in the insured's travels from that abode to his place of work relying on *Jusoh Abu Bakar (supra)* and *Ketua Pengarah Pertubuhan Keselamatan Sosial v. Lee Ping Khoon* (unreported) Rayuan Sivil No. 16-5-02 (MT Pulau Pinang);

(ii) it is not disputed that the Act is a social legislation but nevertheless as per the preamble, it is "An Act to provide social security in certain contingencies".

[8] Learned counsel for the appellant submitted that the rationale in *Jusoh Abu Bakar (supra)* was wanting as the learned judge there did not consider the point as to what would be the position if Jusoh had gone directly from Kuala Terengganu (his temporary place of stay) to Kerteh, his place of work instead of deviating to Paka (his permanent home) which was alluded to by the learned judge in *Rajaparameswari Marimuthu (supra)*.

In my view this contention is not correct as the learned judge in *Jusoh Abu Bakar (supra)* has from the outset considered the point of deviation under s. 24(2) of the Act by stating at p. 386 "However, from the facts of this case, it appears that subsection (2) is not quite applicable as the accident did not occur during any

A interruption of or deviation from the journey on a route between the respondent's place of residence or stay and his place of work". Further, it is to be noted that no distinction was made with regard to "residence" or "stay" as was done in *Rajaparameswari Marimuthu (supra)*.

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I subscribe to the distinction drawn between "residence" or "stay" in *Rajaparameswari Marimuthu (supra)* in that the former word connotes a degree of permanency whilst the latter word connotes that the person would stop at the place only for a short
C while; there is no permanency as in "residence". However adopting the position in *Jusoh Abu Bakar (supra)* and *Lee Ping Khoon (supra)*, I am of the view that be it a "place of residence or stay", that place must ultimately relate to the insured's place of work for the purpose of s. 24(1)(a) of the Act which reads "(a)
D is travelling on a route between his place of residence or stay and his place of work". (emphasis added). To my mind, the words "between" and "and" are especially significant as they denote the route whereby the insured travels from his "place of residence" or "place of stay" must have a direct nexus to his place of work ie,
E it must be the base from where he goes to work everyday before any accident happening can be deemed to arise out of and in the course of his employment.

Based on the facts of this case, I agree with the submission of
F learned counsel for the respondent that the employer had provided the appellant quarters in which the appellant would stay and travel to and from daily to work. The appellant himself has stated that it is from the house in Taman Putra Perdana that he commutes to and from work everyday. He had also stated that he returns to
G Jelapang only on festivals and/or on leave days and when it is a public holiday which clearly means that his stay at his residence in Jelapang is purely to visit his family or for a break and cannot be said to be a place of residence in which he intended himself to commute to and from work everyday.

H **[9]** Finally, as much as the Act is a social legislation, one must not lose sight that the object of the Act is "to provide social security in certain contingencies" as circumscribed in the legislation.

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[10] For the foregoing reasons I find the learned Chairwoman of the SOSCO appellate board has not erred save for her reference to Jelapang being outside the geographical limits of the State of Selangor as a factor for excluding the appellant's family home in Jelapang as his place residence or stay when there is no such limitation in s. 24(1)(a) of the Act; this point however does not affect the decision which was correctly arrived at by the SOSCO appellate board. In the circumstances the appeal of the appellant is dismissed with costs to be taxed unless otherwise agreed.

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